

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DON ANGELO DAVIS,

No. 2:20-cv-1260 DB P

Plaintiff,

V.

ROBERT BURTON, Warden,

## ORDER

Defendant.

16 Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42  
17 U.S.C. § 1983. Plaintiff claims that his Eighth Amendment rights were violated. Presently  
18 before the court is plaintiff's motion for judicial notice. (ECF No. 21.) For the reasons set forth  
19 below, the court construes the request as a motion for consideration and will deny the motion.

## I. Background

21 By order dated June 16, 2021, the court screened and dismissed plaintiff's amended  
22 complaint because even though plaintiff had stated a potentially cognizable Eighth Amendment  
23 claim, he had identified only Doe defendants. (ECF No. 15.) Plaintiff was given sixty days leave  
24 to amend and advised to use the time to attempt to determine the names of the Doe defendants.  
25 (Id.)

26 In response plaintiff filed a two-page document captioned "First Amended Complaint."  
27 (ECF No. 19.) His filing did not restate the factual allegations contained in prior complaints.  
28 Rather, plaintiff stated that he wanted to add officers J. Ceja and K. Lamas as defendants. (Id. at

1 1.) He further stated he was still in the process of trying to ascertain the names of the Doe  
2 defendants. (Id. at 2.)

3 The court dismissed the complaint for failure to state a claim because it did not contain a  
4 recitation of the facts giving rise to the claim. Additionally, the court noted that the facts alleged  
5 in prior complaints regarding officers Ceja and Lamas were not likely to support a cognizable  
6 claim against these officers. (ECF No. 20 at 4.) The court explained that plaintiff could not state  
7 a cognizable claim against these officers based solely on their involvement in processing and/or  
8 responding to his grievance. (Id.) Plaintiff was granted thirty days leave to file an amended  
9 complaint. (Id. at 6.)

10 Thereafter, plaintiff filed the instant request for judicial notice. (ECF No. 21.) He argues  
11 the court improperly dismissed his claims against officers Ceja and Lamas, as well as his prior  
12 complaints. He claims that because he spoke with Ceja and Lamas about the incident, they  
13 became a fourth and fifth party to the alleged constitutional violations. (Id. at 4.) Because  
14 plaintiff alleges the court improperly dismissed his prior complaint, the court will construe the  
15 request for judicial notice as a motion for reconsideration of the court's August 27, 2021  
16 screening order.

17 **II. Request for Reconsideration**

18 Under Federal Rule of Civil Procedure 60, reconsideration is appropriate in three  
19 instances: (1) when there has been an intervening change of controlling law; (2) new evidence has  
20 come to light; or (3) when necessary to correct a clear error or prevent manifest injustice. School  
21 District No. 1J v. ACandS, Inc., 5 F.3d 1255, 1262 (1993). Additionally, the local rules state that  
22 a motion for reconsideration must demonstrate: "what new or different facts or circumstances are  
23 claimed to exist which did not exist or were not shown upon such prior motion, or what other  
24 grounds exist for the motion; and [ ] why the facts or circumstances were not shown at the time of  
25 the prior motion." E.D. Cal. R. 230(j)(3), (4).

26 "[A] motion for reconsideration should not be granted, absent highly unusual  
27 circumstances, unless the district court is presented with newly discovered evidence, committed  
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1 clear error, or if there is an intervening change in the controlling law.” 389 Orange St. Partners v.  
2 Arnold, 179 F.3d 656, 665 (9th Cir. 1999).

3 Plaintiff’s request for judicial notice indicates his disagreement with the court’s screening  
4 order. (ECF No. 21.) However, plaintiff’s disagreement with the court’s ruling is not grounds for  
5 reconsideration. See U.S. v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001)  
6 (Mere disagreement with the decision is not sufficient grounds to warrant relief from the order.).  
7 Accordingly, the court will deny the motion.

8 **III. Identifying the Doe Defendants**

9 The court notes that plaintiff sought to add Ceja and Lamas as defendants because he has  
10 not yet ascertained the identities of the Doe defendants. He has further indicated that he is still  
11 attempting to identify the Doe defendants. He is advised that a court may authorize early  
12 discovery “for the convenience of parties and witnesses and in the interests of justice.” Fed. R.  
13 Civ. P. 26(d)(3). Courts generally require a party to show good cause to warrant early discovery.  
14 See e.g., Texas Guaranteed Student Loan Corp. v. Dhindsa, No. C 10-0035, 2010 WL 2353520,  
15 at \*2 (E.D. Cal. June 9, 2010); Patrick v. Collins Inc. v. Does 1-1219, No. C 10-04468 LB, 2010  
16 WL 5422569, at \*2 (N.D. Cal. Dec. 28, 2010); U.S. v. Distribuidora Batiz CGH, S.A. De C.V.,  
17 No. 07cv370-WQH-JMA, 2009 WL 2487971, at \*10 (S.D. Cal. Aug. 10, 2009).

18 When evaluating whether a plaintiff has shown good cause sufficient to warrant early  
19 discover to identify a doe defendant, plaintiff must: “(1) identify the defendant with enough  
20 specificity to allow the Court to determine whether the defendant is a real person or entity who  
21 could be sued in federal court; (2) recount the steps taken to locate the defendant; (3) show that its  
22 action could survive a motion to dismiss; and (4) file a request for discovery with the Court  
23 identifying the persons or entities on whom discovery process might be served and for which  
24 there is a reasonable likelihood that the discovery process will lead to identifying information.”  
25 Io Group, Inc. v. Does 1-65, individuals, No. 10-4377 SC, 2010 WL 4055667 at \*1 (N.D. Cal.  
26 Oct. 15, 2010) (citing Columbia Ins. Co. v. seescandy.com, 185 F.R.D.573, 578-80 (N.D. Cal.  
27 1999)).

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1 Plaintiff has not sought early discovery or indicated whether or not he has taken any steps  
2 to identify the doe defendants or requested discovery. Accordingly, the court declines to issue an  
3 order authorizing early discovery at this time. However, plaintiff may move for such an order.

4 **IV. Conclusion**

5 For the reasons set forth above, IT IS HEREBY ORDERED that:

6 1. Plaintiff's request for judicial notice (ECF No. 21) is construed as a motion for  
7 reconsideration and denied.

8 2. Plaintiff is granted thirty days from the date of service of this order to file an amended  
9 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
10 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
11 number assigned to this case and must be labeled "Fourth Amended Complaint."

12 3. Failure to comply with this order will result in a recommendation that this action be  
13 dismissed.

14 Dated: October 26, 2021



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16 DEBORAH BARNES  
17 UNITED STATES MAGISTRATE JUDGE  
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